

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

LIBERTY MUTUAL INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

Case No. 07-0693-CV-W-ODS

HOGAN CONSTRUCTION, INC.,)
et al.,)

Defendants.)

ORDER AND OPINION GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff issued payment and performance bonds on behalf of Defendant Hogan Construction, Inc. ("Hogan"). In return, Hogan and various other entities and individuals agreed to indemnify Plaintiff and make their books and records available for inspection in the event Plaintiff became obligated to pay on the bonds. Hogan failed to complete certain projects, thereby requiring Plaintiff to pay on the bonds. In this suit, Plaintiff alleges Defendants have failed to indemnify and reimburse it for the losses incurred. Plaintiff "now seeks partial judgment on its claim for indemnity, specifically granting Liberty Mutual judgment . . . on the matter of liability . . . and awarding Liberty Mutual the amount of its losses." Plaintiff's Suggestions at 2. Plaintiff essentially seeks judgment on the issue of liability and in the amount of damages it has incurred to date. Defendants concede liability, but contend damages have not yet been ascertained.

The Court notes this case was filed approximately four months ago, and the Rule 26 Conference – the date discovery could commence – was less than three weeks ago. While Plaintiff has provided an affidavit attesting to the amounts it has paid, the Court deems it inappropriate to issue a monetary judgment because (1) nobody has really had a chance to conduct any discovery and (2) in the absence of a final amount for damages, this lawsuit could potentially become nothing more than a perpetual disbursing mechanism that provides partial payments.

Accordingly, the Court grants Plaintiff's motion in part, and grants judgment in Plaintiff's favor on the issue of liability.

IT IS SO ORDERED.

DATE: January 22, 2008

/s/ Ortrie D. Smith

ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT